In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 924

BALDWIN BRACELET CORP., NATHAN GOODMAN AND ANNE GOODMAN, PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 7–10) is reported at 325 F. 2d 1012. The opinion and order of the Federal Trade Commission (J.A. 19–42)[1] have not been officially reported.

JURISDICTION

The order of the court of appeals denying the petition to review and enforcing the commission's order was entered on December 19, 1963 (Pet. 10). The petition for certiorari was filed on March 17, 1964.

[1] "J.A." refers to the Joint Appendix filed in the court of appeals.

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The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Federal Trade Commission may require petitioners to disclose that their watch bands are substantially made in Hong Kong even though the Bureau of Customs of the Treasury Department has ruled that the assembly in Virgin Islands of parts fabricated in Hong Kong entitles the bands to enter the United States duty free as articles "manufactured or produced" in an insular possession.

STATUTES INVOLVED

Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, provides, in pertinent part:

> (a)(1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

Section 301 of the Tariff Act of 1930, 19 U.S.C. 1301a, provides, in pertinent part:

> There shall be levied, collected, and paid upon all articles coming into the United States from any of its insular possessions, except Puerto Rico, the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries; except that all articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the United States, or of both, which do not contain foreign materials to the value

> of more than 50 per centum of their total value * * * shall be admitted free of duty upon compliance with such regulations as to proof of origin as may be prescribed by the Secretary of the Treasury.

Section 304 of the Tariff Act, 19 U.S.C. 1304, provides, in pertinent part:

> (a) *Marking of articles.* Except as hereinafter provided every article of foreign origin * * * imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. * * *

STATEMENT

Petitioners Nathan and Anne Goodman own and control the Baldwin Bracelet Corporation, a New York corporation engaged in the production and sale of metal expansion watch bands (J.A. 44). The metal used in Baldwin bands is purchased in the United States and exported to Hong Kong, where it is fabricated into bracelet linkages. Subsequently, Janaco Manufacturing Corporation of St. Thomas, Virgin Islands, an affiliate of Baldwin, imports these bracelet linkages along with additional parts from Hong Kong to the Virgin Islands. In the Virgin Islands the additional parts are affixed to the otherwise finished bands, which are then degreased, polished and shipped to Baldwin for distribution in the United States (J.A. 19, 46).

Acting under Section 301 of the Tariff Act of 1930 as amended, 19 U.S.C. 1301a,[2] the Bureau of Customs of the Treasury Department concluded in 1960 that petitioners' watch bands were not completed until after their assembly in the Virgin Islands, and were therefore products of the Virgin Islands for customs purposes. T.D. 55138(2), 95 Treas. Dec. 281 (1960). Accordingly, petitioners' watch bands are permitted to enter the United States duty-free, as articles "manufactured or produced" in an insular possession which do not contain "foreign materials" to the value of more than 50 percent. Having been considered products of an insular possession, they are also not subject to the 10 percent tax imposed by Section 304 of the Tariff Act of 1930, 19 U.S.C. 1304, on goods which are not marked to show the country of origin. 19 C.F.R. 11.10(b)(3).

The Federal Trade Commission brought a proceeding in March 1961 to require petitioners to cease and desist from failing to disclose that the watch bands which they sell throughout the United States are largely fabricated and assembled in Hong Kong (J.A. 67–69). After a full hearing the Commission found that petitioners' failure to make appropriate disclosure of this fact was a violation of Section 5(a)(1) of the Federal Trade Commission Act (J.A.

[2] The Tariff Classification Act of 1962, 76 Stat. 72, repealed Section 301, but the revision carries forth the substance of Section 301 as General Headnote 3(a), 28 Fed. Reg. 8625. For the convenience of the Court, we shall continue to refer to Section 301 throughout the brief.

27–30), and that the earlier Customs decision and ruling did not determine the place of manufacture for purposes of the Federal Trade Commission Act (J.A. 30–33). The Commission thereupon ordered petitioners to discontinue selling these bands without such disclosure (J.A. 15). The court of appeals unanimously affirmed and enforced the order (Pet. 7–10).[3]

ARGUMENT

Petitioners' sole contention is that the earlier Customs actions under Sections 301 and 304 of the Tariff Act barred the Federal Trade Commission's subsequent determination that petitioners' watch bands were "of foreign origin and fabrication" and required appropriate markings. This contention was correctly rejected by the Commission and then by the court of appeals. Further review is not warranted:

1. The purposes of the Tariff Act and those of the Federal Trade Commission Act are obviously different, and the terms of each should be construed in light of its particular objectives. As shown by the instant case, these policy objectives result in complementary, not conflicting, agency decisions. The Customs decision that assembly of parts in the Virgin Islands identified the watch bands' production sufficiently with that insular possession to qualify them for duty-free treatment and to except them from the added

[3] The Commission's order also required petitioners to discontinue a deceptive practice of "absolutely" guaranteeing their products. Baldwin did not challenge that part of the Commission's order before the court of appeals (J.A. 17, 21–23), and does not challenge it here.

tax imposed on unmarked "articles of foreign origin" is not at all inconsistent with the Federal Trade Commission's decision that consumers were materially misled into believing that the bands were domestically manufactured. The Customs decision could permissibly have been based on a policy of encouraging industry in the United States' insular possessions, and still complement the Federal Trade Commission decision protecting the interests of the consuming public.[4]

2. The Customs and Federal Trade Commission decisions do not, as petitioners contend, subject them to an insoluble dilemma. What the Federal Trade Commission has ordered in this case is not "what [petitioners] are forbidden to do by the Treasury Department" (Pet. 3). All that the Treasury Department has done is to exempt petitioners' bands from the provisions of Section 304. The Treasury Decision which is cited by petitioners as supposedly conflicting with the Federal Trade Commission order (Pet. 19) is limited to "laminated piece goods," and does not, therefore, apply to petitioners. Moreover,

[4] Another court of appeals has also recognized the dissimilarity in purpose of the Tariff Act provisions and the Federal Trade Commission Act. In *L. Heller & Son, Inc.* v. *Federal Trade Commission*, 191 F. 2d 954 (C.A. 7), a unanimous court held that although Customs had power, under Section 304, to require markings on containers of imported imitation pearls, this did not bar the Commission, acting under Section 5(a)(1), from requiring full disclosure when the pearls were sold to the ultimate consumer in the form of necklaces.

even if a similar decision were applicable to petitioners, it would not prohibit truthful disclosure such as "all parts made in Hong Kong" or "'assembled from parts made in Hong Kong," which would appear to satisfy the terms of the Federal Trade Commission order.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted.

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